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FEE COLLECTION

Adopted June 23, 1961.

Addendum issued 1995.

Syllabus

Although controversies with and lawsuits against clients concerning compensation are to be avoided by the lawyer, a lawyer may ethically seek recovery of a fee for services rendered to which the client has agreed and which the client has promised but failed to pay, either by a lawsuit against the client in the lawyer's own name or by assignment of the claim against the client to a collection agency.

Facts

A lawyer performs non-litigation legal services for a client for an agreed fee. After the services have been concluded to the apparent satisfaction of the client and the work product has been delivered to the client, the lawyer renders a statement in the agreed amount which the client fails to pay. The lawyer's discussions with the client about the bill do not disclose any dissatisfaction with the services nor the amount of the fee and the lawyer knows of no reason why payment of the fee would cause the client undue financial hardship, but repeated promises by the client to pay the bill are not fulfilled. May the lawyer ethically: (1) assign the bill to a collection agency? or (2) sue the client in the lawyer's own name?

Opinion

Canon 14 of the Canons of Professional Ethics provides:

Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud.

This admonition against controversies with or lawsuits against clients is couched in forceful terms and should be considered a strong substantive limitation on the action which a lawyer may take in efforts to collect a fee. Ours is a learned profession, not a mere money-getting trade (See Canon 12). However, Canon 14 also gives clear recognition to the right of a lawyer to be reasonably compensated for his services and to the right to bring suit to collect this compensation where necessary.

The facts presented indicate that no settlement fund or judgment belonging to the client is available upon which he might assert the lien granted by C.R.S. 1953, § 12-1-10. Further it appears that he has already delivered to the client any papers against which he could assert a lien pursuant to C.R.S. 1953, § 12-1-11. The fact that he has not availed himself of this statutorily prescribed method of enforcing payment for his services does not, however, cause him to lose the right to avail himself of other legitimate means of obtaining a reasonable recompense for his services.

It should be noted that no controversy is presented as to the amount of the fee; the only question relates to the methods of collection which may be used. The facts imply that the lawyer has reasonably reached the conclusion that satisfaction of his claim cannot be obtained without resorting to one of the two suggested methods for obtaining such recovery, but it is the opinion of the Committee that the lawyer should honestly reach this conclusion before embarking on either course. Only where circumstances imperatively require it should the lawyer resort to either of these means to compel payment.

It is the opinion of the Committee that in this case, if the lawyer has reasonably concluded that only by resort to one of the two suggested methods of collection could he collect the fee, he may use either method for that purpose. Neither assignment of his claim to a collection agency nor suit in the lawyer's own name for the purpose of collecting the fee would be unethical.

1995 Addendum

This Opinion was based upon the Canons of Professional Ethics, the predecessor to the Code of Professional Responsibility. The Colorado Rules of Professional Conduct became effective on January 1, 1993, replacing the Code of Professional Responsibility. While the language of the Rules is somewhat different from the Code and the Canons, the Ethics Committee considers this Opinion to continue to provide guidance to attorneys in this area. Attorneys are cautioned to review The Colorado Code of Professional Responsibility (found in the *Colorado Ethics Handbook*), to update the research contained in this Opinion and to conduct any independent research necessary.

Relevant provisions of the Colorado Rules of Professional Conduct, which should be examined together with this Opinion, are Rule 1.5 (regarding fees) and Rule 1.6 (regarding confidential information). Reference should also be made to Opinion 82 and C.R.S. §§ 12-5-119 and 120.